

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
VORCOM INTERNET SERVICES,
INC.,

Plaintiff,

v.

L&H ENGINEERING & DESIGN LLC and LG
ENGINEERING & DESIGN, INC.,

Defendants.
-----X

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

12 CV 2049 (VB)

Briccetti, J.:

Before the Court is Magistrate Judge Lisa Margaret Smith’s Report and Recommendation (“R&R”), dated January 26, 2015, with respect to an inquest on damages after default. (Doc. #86). Familiarity with the factual background and procedural history of this case is presumed.

In the R&R, Judge Smith recommended that a default judgment should be entered against defendant L&H Engineering & Design LLC, on plaintiff’s breach of contract claim in the amount of \$90,000, plus (i) pre-judgment interest at the rate of 9% per annum from March 20, 2012, until the date of entry of judgment, and (ii) post-judgment interest calculated in accordance with 28 U.S.C. § 1961. Judge Smith also recommended that the Court conclude that plaintiff’s claims for fraud in the inducement and for violation of New York General Business Law § 396-p cannot be maintained and that plaintiff cannot recover damages on these claims. Finally, Judge Smith recommended that the Court conclude that plaintiff cannot maintain its claim for a declaratory judgment and has failed to prove it is entitled to the declaratory relief sought.

For the following reasons, the Court adopts the R&R as the opinion of the Court.

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate

judge.” 28 U.S.C. § 636(b)(1). Parties may raise objections to the magistrate judge’s report and recommendation, but they must be “specific[,] written,” and submitted within 14 days after being served with a copy of the recommended disposition. Fed. R. Civ. P. 72(b)(2); 28 U.S.C. § 636(b)(1).

Insofar as a report and recommendation deals with a dispositive motion, a district court must conduct a de novo review of those portions of the report or specified proposed findings or recommendations to which timely objections are made. 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record. Lewis v. Zon, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). The clearly erroneous standard also applies when a party makes only conclusory or general objections, or simply reiterates his original arguments. Ortiz v. Barkley, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008).

None of the parties has objected to Judge Smith’s thorough and well-reasoned decision.

The Court has carefully reviewed the R&R and finds no error, clear or otherwise.

CONCLUSION

Accordingly, the R&R is adopted in its entirety as the opinion of the Court.

A default judgment shall be entered against defendant L&H Engineering & Design LLC, on plaintiff’s breach of contract claim in the amount of \$90,000, plus (i) pre-judgment interest at the rate of 9% per annum from March 20, 2012, until the date of entry of judgment, and (ii) post-judgment interest calculated in accordance with 28 U.S.C. § 1961.

Plaintiff’s claims for fraud in the inducement; for violation of New York General Business Law § 396-p; and for a declaratory judgment are dismissed.

Plaintiff has advised the Court that defendant LG Engineering & Design, Inc., has filed for bankruptcy protection, and has not requested that the action be stayed as to LG Engineering & Design, Inc. (Doc. #83). Accordingly, all claims against defendant LG Engineering & Design, Inc., are dismissed without prejudice.

The Clerk is instructed to enter judgment in accordance with the foregoing and to close this case.

Dated: March 5, 2015
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent Briccetti', written over a horizontal line.

Vincent L. Briccetti
United States District Judge